

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner's daughter is a thirteen-year-old girl whose orthodontist has recommended comprehensive orthodonture for her. The orthodontist submitted a request for orthodontic treatment on April 16, 2002 on a form prepared by PATH. On that form he diagnosed his patient's condition as "Class II, Div. I, Late mixed dentition, tendency to crossbite, overbite". However, he indicated that the girl's dentition did not meet any of the major or minor criteria set forth on the form.

2. On April 28, 2002, PATH notified the petitioner that her daughter's orthodontic problem was not severe enough to qualify for comprehensive orthodontic treatment.

3. The petitioner appealed that decision. The matter has been continued for over a year pending the Board's decisions in other orthodontic cases in which the Department's standards of review were in issue. The petitioner was eventually furnished with a copy of those decisions and advised to obtain legal help to determine if her daughter's orthodontist would verify that she met the standard of severity articulated by the Board in those decisions.

4. At a hearing on June 25, 2003 the petitioner admitted that her daughter's orthodontist had informed her attorney that her daughter did not have any current ailments due to her malocclusion and that he could not state that she would be likely to have any problems in the future if she were not treated.¹

ORDER

The Department's decision is affirmed.

¹ The petitioner advised the hearing officer that her daughter had begun orthodontic treatment anyway at the family's expense.

REASONS

PATH has adopted regulations which require it to pay for only "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. M622.1, 622.2 and 622.3. The regulations further provide that "to be considered medically necessary, the patient's condition must have one major or two minor malocclusions according to diagnostic criteria adopted by the Department's dental consultant or if otherwise medically necessary under EPSDT found at M100." M622.4. PATH interprets EPSDT and M100 as requiring that it cover only "handicapping malocclusions." See Fair Hearing No. 17,070 et al.

A person asserting eligibility for coverage under a PATH program has the burden of presenting evidence showing that he or she should be covered. Fair Hearing Rule 11. In this matter, the petitioner did not present any evidence that her daughter meets any of the Department's major or minor criteria or that her problems are equally as severe or "handicapping" as any combination of impairments listed as sufficiently severe.² Therefore, the Department's decision denying

² The criteria used by PATH require that the malocclusion be severe enough to meet a minimum of 1 major or 2 minor diagnostic treatment criteria as follows:

orthodontic coverage under the Medicaid program must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#

Major Criteria	Minor Criteria
Cleft palate	1 Impacted cuspid
2 impacted cuspids	2 Blocked cupsids per arch (deficient by at least 1/3 of needed space)
Other severe cranio-facial anomaly	3 Cogenitally missing teeth, per arch (excluding third molars)
	Anterior open bite 3 or more teeth (4+mm)
	Crowding, per arch (10+ mm)
	Anterior crossbite (3+ teeth)
	Traumatic deep bite Impinging on palate
	Overjet 10+mm (measured from labial to labial)